

**UNITED STATE DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA	)	
	)	
V.	)	Criminal No. 12-10226-DJC
	)	
JOHN KOSTA,	)	
Defendant	)	
	)	

**MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO A SEARCH WARRANT**

NOW COMES the accused, John Kosta, by and through counsel, and moves this Court to Suppress any and all evidence obtained from an August 7, 2012, search of his home located at 45 Riley Switch Road, Philipston, Massachusetts, conducted pursuant to a search warrant issued by the United States District Court (M.J., Bowler) on August 6, 2012.

In support, the accused states as follows:

1. On August 6, 2012, a search warrant was issued by the United States District Court (M.J., Bowler) authorizing the search of 45 Riley Switch Road, Philipston, Massachusetts.
2. The search warrant was issued based on the affidavit of FBI Special Agent Stephen Kelleher.
3. On August 7, 2012, the search warrant was executed and the accused's home located at 45 Riley Switch Road, Philipston, Massachusetts, was searched by a number of government agents.
4. As the 45 Riley Switch Road was the accused's home, the accused had a reasonable expectation of privacy in the residence and has standing to challenge the search warrant and resulting search of that location.
5. The accused submits that probable cause for the search warrant authorizing the search of 45 Riley Switch Road was lacking as there was no nexus between the underlying drug investigations outlined in Agent Kelleher's supporting affidavit and the 45 Riley Switch Road residence. Further, any information outlined in the

affidavit purportedly establishing a nexus between the drug investigation and the 45 Riley Switch Road residence was stale. In addition, the affidavit submitted by Agent Kelleher contained material misrepresentations and omissions put forward, the accused submits, in an attempt to establish a nexus between the drug investigation and the 45 Riley Switch Road location.

6. Accordingly, the accused submits that the warrant lacked probable cause to believe evidence of the suspected crime would be presently located in 45 Riley Switch Road and the search conducted pursuant to the search warrant violated the accused's rights as protected by the Fourth Amendment. Illinois v. Gates, 462 U.S. 213 (1983); Aguilar v. Texas, 378 U.S. 108 (1964); United States v. Zayas-Diaz, 94 F.3d 105 (1<sup>st</sup> Cir. 1996).
7. In addition, the accused submits that he is entitled to a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978) regarding the material misrepresentations and omissions in Agent Kelleher's affidavit.
8. The accused submits that the good faith exception outlined in United States v. Leon, 468 U.S. 897 (1984) is not applicable here given the lack of probable cause for the search warrant and the material misrepresentation and omissions in the supporting affidavit of Agent Kelleher.

WHEREFORE, the accused respectfully requests that this Court grant his motion and suppress any and all evidence obtained from a search of 45 Riley Switch Road, Philipston, Massachusetts, conducted pursuant to the August 6, 2012 search warrant and any subsequent searches of 45 Riley Switch Road and any subsequent searches of items seized during the August 7, 2012 search as being the fruits of the illegally issued August 6, 2012 search warrant.<sup>1</sup>

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<sup>1</sup> A second August 17, 2012 search warrant was sought to search 45 Riley Switch Road because the agents left behind items located but not seized during the August 7, 2012 search. The August 17, 2012 was allowed by the District Court (M.J., Bowler) and the residence was searched the same day and the items sought were seized. The Government then sought search warrants on January 30, 2013 for computers, cell phones and data from devices seized during the August 7, 2012 search.

Respectfully submitted,  
John Kosta,  
By His Attorney

DATE: April 16, 2013

/S/Paul J. Garrity  
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CERTIFICATE OF SERVICE

I, Paul J. Garrity, do hereby certify that on this 16<sup>th</sup> day of April, 2013, a copy of the within was e filed to the United States Attorney's Office and mailed, postage prepaid, to John Kosta.

/S/Paul J. Garrity